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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: RETAIL GROUP, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 20-33113 (KRH) (Jointly Administered)

SECURITIES LEAD PLAINTIFFS' SUPPLEMENTAL OBJECTION TO CONFIRMATION OF THE THIRD AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ASCENA RETAIL GROUP, INC. AND ITS DEBTOR AFFILIATES

Joel Patterson and Michaella Corporation ("Lead Plaintiffs"), the court-appointed lead plaintiffs in the securities fraud class action captioned as *In re Ascena Retail Group, Inc. Securities Litigation,* Case No. 2:19-cv-13529-KM-JBC (the "Securities Litigation"), pending in the United States District Court for the District of New Jersey (the "District Court"), for themselves and the putative class they seek to represent in the Securities Litigation (the "Proposed Class"), hereby submit this supplemental objection (the "Supplemental Objection") to confirmation of the *Third Amended Joint Chapter 11 Plan of Reorganization of Ascena Retail*

[1] A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' claims and noticing agent at http://cases.primeclerk.com/ascena. The location of Debtor Ascena Retail Group, Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 933 MacArthur Boulevard, Mahwah, New Jersey 07430.

Group, Inc. and its Debtor Affiliates (as amended, the "Plan") [Docket No. 1403] proposed by the above-captioned debtors and debtors-in-possession (the "Debtors"). In support of their Supplemental Objection, Lead Plaintiffs respectfully state as follows:

PRELIMINARY STATEMENT[2]

1. As set forth in the initial Objection, the Third-Party Release is illegal and fundamentally unjust because it threatens to gratuitously and unjustifiably release the claims of Lead Plaintiffs and the Proposed Class against the Non-Debtor Defendants in the Securities Litigation. In fact, the Debtors are attempting to obtain relief for the Non-Debtor Defendants that, as a matter of law, the Non-Debtor Defendants could not obtain even if they filed bankruptcy themselves. *See* 11 U.S.C. § 523(a)(19) (liabilities of an individual debtor for violations of securities laws are categorically nondischargeable).

2. Members of the Proposed Class are receiving nothing under the Plan, are deemed to reject the Plan, and thus have no reason whatsoever to believe these Chapter 11 Cases will or should impact them. Under those circumstances, no informed member of the Proposed Class would ever voluntarily grant the Third-Party Release. Yet, the Debtors seek to foist upon them the obligation to affirmatively opt *out* of the Third-Party Release, on peril of being deemed to have "consented" to forfeit their claims against the Non-Debtor Defendants in exchange for absolutely nothing. That is not consent. It is nothing more than a legal fiction engineered to create the illusion of consent by default.

3. Stripping Lead Plaintiffs and the Proposed Class of their valuable claims against the Non-Debtor Defendants (and likely their only remaining source of recovery on their ill-fated investment) would be particularly inequitable where the Non-Debtor Defendants are covered by

[2] Capitalized terms used but not otherwise defined in the Preliminary Statement have the meanings ascribed to them either in the Plan or below.

substantial D&O liability insurance. The Third-Party Release would provide no benefit whatsoever to the Debtors, their estates, or any class of creditors. The only economic beneficiaries of the Third-Party Release in its current form are the Debtors' D&O insurance carriers, who would effectively receive a free policy release, and the Non-Debtor Defendants, who are no longer employed by the Debtors, played no role whatsoever in the Debtors' bankruptcy efforts, and, in fact, ceased to be employed by the Debtors *before the Debtors ever filed for bankruptcy protection*.

4. The impropriety and injustice of the Third-Party Release is now magnified by the fact that the Debtors are no longer reorganizing but have sold all their brands and substantially all their assets and are liquidating. The Debtors nevertheless remain unfazed in their efforts to completely disenfranchise members of the Proposed Class. However, the Debtors have not pointed, and cannot point, to *any* potential impact that the continued prosecution of the Securities Litigation against the Non-Debtor Defendants might have on their estates or any class of creditors. In their Omnibus Response, the Debtors fail to even address, much less overcome, Lead Plaintiffs' arguments against the Third-Party Release or otherwise articulate why this Court should approve the Third-Party Release, to the detriment of disenfranchised investors.

5. The Debtors do not even attempt to offer a factual or legal justification for the proposed gratuitous release of the Non-Debtor Defendants – two of the Debtors' *former* executives, who oversaw the Debtors' financial downfall – because there is none. This is clear where the Debtors seemingly acknowledge that such "far-removed parties" are merely related to other parties that "have made the most significant contributions" to the Debtors' reorganization efforts (efforts that, in any event, have been abandoned in favor of liquidation).[3] However, the

[3] Omnibus Response, ¶ 23.

Non-Debtor Defendants have made no contribution whatsoever to the Debtors' estates and are not providing any consideration or other value for the Third-Party Release. On that basis alone, under well-settled Fourth Circuit law, the Plan cannot be confirmed.

6. In addition, the Plan cannot be confirmed because it (a) contains no mechanism for preserving the Debtors' books, records, and other evidence potentially relevant to the Securities Litigation after the effective date of the Plan and (b) does not preserve the claims of Lead Plaintiffs and the Proposed Class against the Debtors to the extent of any available insurance coverage for such claims.

BACKGROUND[4]

A. The Securities Litigation

7. The Securities Litigation is a federal securities class action filed in June 2019. By order entered August 23, 2019, (the "Stipulated Order") [Securities Litigation Docket No. 26], the District Court appointed Lead Plaintiffs as lead plaintiffs and Robbins Geller Rudman & Dowd LLP and Pomerantz LLP as lead counsel in the Securities Litigation.

8. Lead Plaintiffs filed their *Consolidated Amended Complaint for Violations of the Federal Securities Laws* (the "Amended Complaint") on November 21, 2019, against Ascena Retail Group, Inc. ("Ascena")[5] and Messrs. David R. Jaffe and Robert Giammatteo (the "Non-Debtor Defendants"), two former officers and directors of one of the Debtors, Ascena Retail Group, Inc. ("Ascena" and collectively with the Non-Debtor Defendants, the "Defendants").[6] The Amended Complaint asserts claims on behalf of a proposed class comprised of all persons,

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[4] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Debtors' Plan and the operative disclosure statement.

[5] Prior to its incorporation in 2011, Ascena was known as The Dress Barn, Inc. All references herein to Ascena include its predecessor, The Dress Barn, Inc.

[6] Following the final sale of substantially all of its remaining assets, Ascena Retail Group, Inc. was renamed Retail Group, Inc. and the caption of the lead chapter 11 case changed accordingly. *See* Docket No. 1295, ⁋ 67.

other than the Defendants, who purchased or otherwise acquired Ascena common stock between December 1, 2015 and May 17, 2017 (the "Proposed Class").

9. The Amended Complaint generally alleges that the Defendants engaged in a deceptive scheme and made false and misleading statements and omissions of material fact, which artificially inflated and/or maintained artificial inflation in the price of Ascena's common stock between December 1, 2015 and May 17, 2017 (the "Class Period"), in violation of Sections 10(b) and/or 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and United States Securities and Exchange Commission Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

B. Relevant Bankruptcy Proceedings

10. On July 23, 2020, the Debtors commenced these voluntary chapter 11 cases (the "Chapter 11 Cases") in the United States Bankruptcy Court for the Eastern District of Virginia (the "Court"). No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors filed the original version of the Plan on July 31, 2020 [Docket No. 154].

11. On October 13, 2020, the Lead Plaintiffs filed their *Objection to Confirmation of the Amended Joint Chapter 11 Plan of Reorganization of Ascena Retail Group, Inc. and its Debtor Affiliates* (the "Objection") [Docket No. 889].

12. On November 20, 2020, the Debtors filed an omnibus response to various objections to confirmation of the Plan (the "Omnibus Response") [Docket No. 1163].

13. After adjourning the confirmation hearing several times, the Debtors ultimately announced in late November 2020 that they no longer intended to reorganize, but rather, planned to sell their remaining brands and related assets and liquidate. To that end, on December 30, 2020, the Debtors filed the third amended (and current) version of the Plan [Docket No. 1403], providing for the liquidation of the Debtors' remaining assets.

C. The Plan and Third-Party Release

14. Article VIII.F of the Plan contains, as did prior versions of the Plan, a deemed release (the "Third-Party Release") of claims by numerous non-Debtor "Releasing Parties" against the Debtors and myriad other non-Debtors. The "Releasing Parties" deemed to grant the Third-Party Release includes, among a vast array of others:

> . . . ***(o) all holders of Impaired Claims who abstained from voting on the Plan or voted to reject the Plan but did not timely opt out of or object to the applicable release . . . (q) all holders of Interests*** . . . ***provided that, in each case, an Entity shall not be a Releasing Party if it: (x) elects to opt out of the releases contained in the Plan;*** or (y) timely objects to the releases contained in the Plan and such objection is not resolved before Confirmation[.]

Plan, Art. I.A.131 (emphasis added).

15. The "Released Parties" benefitting from the Third-Party Release comprise a similarly sweeping universe including, among numerous others, the Debtors, their current and former Affiliates, and the Debtors and their Affiliates' current and former directors, managers, officers, equity holders, and employees. *See* Plan, Art. I.A.130. Through a convoluted web of interconnected provisions that a creditor or interest holder is compelled to navigate and the lists of categories of parties, related parties, and related parties' related parties that the Plan defines as a Released Party, it appears that each of the Non-Debtor Defendants may be a Released Party deemed to be released by the Releasing Parties from "any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Debtors . . . based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), the purchase, sale, or rescission of any Security of the Debtors . . . or upon any other act, omission, transaction, agreement, event, or other occurrence (in each case, related to any of the foregoing) taking place on or before the Effective Date." *See* Plan, Art. VIII.F. As Lead Plaintiffs pointed out in their

initial Objection, the Third-Party Release does not even include a customary exclusion of acts constituting fraud, willful misconduct, or gross negligence.

16. The Plan also contains an injunction barring, among other things, "(i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or interests or Causes of Action" against any Released Party by "all Entities that held, hold, or may hold claims or interests or Causes of Action" (the "Plan Injunction"). *See* Plan, Art. VIII.H.

D. Treatment of the Class Claims Under the Plan

17. On September 30, 2020, Lead Plaintiffs filed a proof of claim [Claim No. 3543] asserting claims against Ascena on behalf of themselves and the Proposed Class and its members, individually and/or as a group (the "Class Claims"). Because the Class Claims arise from the purchase and sale of securities of Ascena, they are subject to subordination pursuant to section 510(b) of the Bankruptcy Code.

18. The Plan does not classify the Class Claims or any other claims subordinated pursuant to section 510(b). However, it does define "Interest" to include, in addition to equity securities, "any claim against . . . the Debtors subject to subordination pursuant to section 510(b) of the Bankruptcy Code" arising from the purchase of the Debtors' equity securities. Plan, Art. I.A.101. Thus, the Class Claims fall within the definition of "Interests" under the Plan.

19. Interests are classified in Class 8 under the Plan, and will be "cancelled, released, and extinguished without any distribution." *See* Plan, Art. III.B.8. Because Class 8 is receiving nothing under the Plan, holders of claims in Class 8, including Lead Plaintiffs and the Proposed Class, are deemed to reject the Plan and were not entitled to vote. *Id.* As discussed below, pursuant to Articles I.A.131 and VIII.F of the Plan, holders of claims in impaired, non-voting classes (such as Proposed Class members) would be deemed to grant the Third-Party Release

unless they take affirmative steps to opt out – even though they are receiving nothing under the Plan and are not entitled to vote.

E. The Opt-Out Election

20. On September 11, 2020, the Court entered an order approving the proposed disclosure statement and solicitation procedures for the Plan (the "Solicitation Procedures Order") [Docket No. 592]. The Solicitation Procedures Order included as exhibits, among other things, a *Notice of Non-Voting Status to Holders of Interests Deemed to Reject the Plan and of Third Party Release Under the Plan* (the "Impaired Non-Voting Notice") [Docket No. 592, Schedule 5] and an election form for such creditors to opt out of the Third-Party Release (the "Opt-Out Election Form"), annexed to the Impaired Non-Voting Notice.

21. On October 2, 2020, Lead Plaintiffs filed a motion (the "Opt-Out Motion") [Docket No. 740] for an order authorizing Lead Plaintiffs (or confirming their inherent authority) to opt out of the Third-Party Release on behalf of all Proposed Class members. A hearing on the 7023 Motion is scheduled for the same date and time as the Plan confirmation hearing.

OBJECTION

I. THE PLAN CANNOT BE CONFIRMED BECAUSE THE THIRD-PARTY RELEASE IS ILLEGAL AND FUNDAMENTALLY UNJUST.

A. The *Dow Corning* factors overwhelmingly militate against approval of the Third-Party Release.

22. The Third-Party Release is improper to the extent it purports to release any direct claims belonging to Lead Plaintiffs and the Proposed Class against the Non-Debtor Defendants or any other Released Party. The inequity of the Third-Party Release is magnified by the fact that Lead Plaintiffs and members of the Proposed Class are not entitled to vote on the Plan, are deemed to reject the Plan, *and are receiving nothing* under the Plan. Most or all members of the Proposed Class likely are strangers to these Chapter 11 Cases and, because the Class Period

ended three and a half years ago, have no inkling that they may have any connection to the Chapter 11 Cases at all. Yet, the Third-Party Release would strip Lead Plaintiffs and the Proposed Class of their claims against the Non-Debtor Defendants, likely their *only* source of compensation for the losses they incurred as a result of their investment and the misconduct alleged in the Securities Litigation.

23. The Debtors readily acknowledge in their Omnibus Response that the only way creditors such as Lead Plaintiffs and members of the Proposed Class may salvage their claims against the Non-Debtor Defendants and each Released Party from the ramifications of the Third-Party Release is by affirmatively opting out, regardless of whether they know that failing to do so would release claims they likely do not even know that they have. Therefore, this opt-out requirement improperly places the burden on defrauded investors – assuming they are even aware of these Chapter 11 Cases – to locate and review the Plan (now in its fourth iteration), study the complicated Third-Party Release, and ascertain that *even though they are receiving nothing under the Plan* and thus are not entitled to vote, they nevertheless must take affirmative steps to preserve their rights against the Released Parties. That exercise is unduly convoluted even for parties represented by counsel, much less absent members of the Proposed Class.

24. Particularly because the Class Period ended three and a half years ago, many members of the Proposed Class no longer hold the Debtors' securities and thus are likely unaware of the Plan, the voting deadline, or even the Chapter 11 Cases generally. They certainly have no reason to expect that the Plan would threaten their rights against non-Debtor third parties. The Debtors gloss over this stark reality in their Omnibus Response, outlining their meager efforts to serve the Impaired Non-Voting Notice and Opt-Out Election Form on members

of the Proposed Class through nominee brokers.[7] The Debtors state that they served the Impaired Non-Voting Notice and Opt-Out Election Form on Prime Clerk's "comprehensive proprietary list" of third-party nominees and mailing agents "with instructions to forward the materials" to Proposed Class members. In light of the Debtors' lackluster noticing process and the burden the opt-out procedure would unjustifiably impose on members of the Proposed Class, the Debtors' bare assertion that they provided Purported Class members with "a meaningful opportunity" to exercise their opt out rights is wholly unavailing.[8]

25. In any event, even if each and every member of the Proposed Class actually received the Impaired Non-Voting Notice and Opt-Out Election Form, placing the burden of locating and interpreting complex legal documents on individual members of the Proposed Class, *who are receiving nothing under the Plan*, whose claims arise from a Class Period that ended three and a half years ago, and many of whom likely are not even aware that they have claims against the Non-Debtor Defendants that could be impacted by the Third-Party Release, is fundamentally inequitable, unjustifiable, and legally impermissible.

26. As applied to holders of claims in impaired, non-voting classes, such as Lead Plaintiffs and the Proposed Class, the improper and defective opt-out provision in the Plan and solicitation procedures, and the illusory "consent" supposedly created thereby, transform the Third-Party Release into a *de facto* nonconsensual release.

27. The Fourth Circuit established the standard for analyzing a non-debtor, third-party release in *Behrman v. National Heritage Foundation*, 663 F.3d 704 (4th Cir. 2011). The *Behrman* court considered the propriety of a third-party release included in the debtor's plan of reorganization. *Id*. at 706. The debtor, National Heritage Foundation ("NHF"), sought to release

[7] Omnibus Response, ¶ 16.

[8] *Id.*, ¶ 17.

the official committee of unsecured creditors and other parties closely connected with NHF, including its officers and directors, from claims that accrued on or before the effective date of the plan. *Id*. at 707.

28. In analyzing the Bankruptcy Court's decision to confirm the plan with the release provision, the Fourth Circuit began its analysis from the well-settled principle that non-debtor releases in a plan of reorganization are a "***unique***" and "***dramatic measure***" that should be "***granted cautiously and infrequently***." *Id*. at 711 (citations and quotations omitted) (emphasis added). The court adopted the analysis established by the Sixth Circuit in *Class Five Nev. Claimants v. Dow Corning Corp*., 280 F.3d 648 (6th Cir. 2002), which set forth a number of factors to evaluate in discerning whether a non-debtor release should be approved, as follows:

> (i) there is an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate; (ii) the non-debtor has contributed substantial assets to the reorganization; (iii) the injunction is essential to reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor; (iv) the impacted class, or classes, has overwhelmingly voted to accept the plan; (v) the plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction; (vi) the plan provides an opportunity for those claimants who choose not to settle to recover in full and; (vii) The bankruptcy court made a record of specific factual findings that support its conclusions.

Behrmann, 663 F.3d at 711-12. The Third-Party Release does not satisfy *any* of the *Dow Corning* factors.

29. Despite the Debtors' arguments in the Omnibus Response to the contrary, application of the six substantive *Dow Corning* factors overwhelmingly militate against approval of the Third-Party Release of Non-Debtor Defendants and therefore, confirmation of the Plan.

30. ***Factor I*** – Under the first *Dow Corning* factor, the Court must consider "whether there is an identity of interests – usually an indemnity obligation – between the debtor and the released parties." A non-debtor release "may be appropriate in such circumstances because a suit against the non-debtor may, in essence, be a suit against the debtor that risks depleting the assets of the estate." *National Heritage Foundation, Inc. v. Highbourne Foundation,* 760 F.3d 344, 348 (4th Cir. 2014) (citation omitted). The Debtors argue generally that there is an identity of interests between themselves and the Released Parties because the Debtors are required to indemnify certain Released Parties under various corporate organizational documents and other agreements.[9] Even if that generalized assertion applied to the Non-Debtor Defendants or the Securities Litigation, an identity of interests arising from the Debtors' obligation to indemnify the Non-Debtor Defendants by itself would be insufficient to justify the Third-Party Release. *See In re Quincy Medical Center, Inc.,* 2011 WL 5592907, at *3 (Bankr. D. Mass. Nov. 16, 2011) ("While there appears to be an identity of interests between and among the debtors and their directors and officers arising from the debtors' obligation to indemnify them . . . such an identity of interests by itself is insufficient to justify releases.") (citing *In re Washington Mutual, Inc.,* 442 B.R. 314, 349-50 (Bankr. D. Del. 2011)).

31. Notwithstanding the Debtors' conclusory assertions about indemnification, this factor weighs against approving the Third-Party Release with respect to the Securities Litigation for three reasons. First, any indemnification claims by the Non-Debtor Defendants in connection with the Securities Litigation are, just as the Class Claims of Lead Plaintiffs and the Proposed Class, subordinated pursuant to section 510(b) and not entitled to any distribution under the Plan. Second, any such indemnification claims are also potentially subject to disallowance under

[9] Omnibus Response, ¶ 21.

section 502(e)(1)(B) of the Bankruptcy Code. Third, the Debtors are assuming their D&O Liability Insurance Policies through the Plan. As a result, the claims asserted against the Non-Debtor Defendants in the Securities Litigation will not – indeed, *cannot* – affect the Debtors' estates at all.[10] Thus, this factor clearly weighs against approving the Third-Party Release.

32. ***Factor II*** – Under the second *Dow Corning* factor, the Court must consider whether the Non-Debtor Defendants made a ***substantial contribution of assets*** to the Debtors' ***reorganization efforts***. This factor weighs against approving the Third-Party Release of the Non-Debtor Defendants, who have contributed absolutely nothing to the estate or the Debtors' reorganization (now orderly liquidation) efforts. The Debtors contend that the expenditure of significant time analyzing and negotiating issues presented by the Debtors' capital structure, claims, the COVID-19 pandemic, material barriers to a global resolution, and negotiating the terms of the Plan qualifies as a substantial contribution warranting approval of the Third Party Release.[11] However, the Non-Debtor Defendants were not involved in any of these efforts.

33. While admitting that the Non-Debtor Defendants are "far-removed parties related to the Released Parties that have made the most significant contributions[,]" the Debtors nevertheless argue that the Third-Party Release of the Non-Debtor Defendants ensures that "they will not be indirectly attacked after the fact for the role they played in the Debtors' Restructuring and by maximizing the Debtors' fresh start[.]"[12] However, the Debtors fail to mention that the Non-Debtor Defendants *played no role* in the Chapter 11 Cases because they were no longer employed by the Debtors on the Petition Date. In addition, there is no more "fresh start" for the

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[10] As of the Plan Effective Date, the Debtors "shall be deemed to have assumed all of the D&O Liability Insurance Policies (including, if applicable, any 'tail policy'" pursuant to section 365(a) of the Bankruptcy Code. *See* Plan, Art. IV.O.

[11] Omnibus Response, ¶ 22.

[12] Omnibus Response, ¶ 23.

Debtors, as they have sold substantially all their assets and pivoted to a liquidation. Accordingly, this factor weighs heavily against approving the Third-Party Release with respect to the Non-Debtor Defendants.

34. Even if the Non-Debtor Defendants were still employed by the Debtors or otherwise somehow played a role in the Debtors' abandoned efforts to reorganize, the substantial contribution requirement necessitates that corporate directors and officers do more than just perform their job duties; they must actually provide a ***financial contribution*** to the Debtors' reorganization. *See, e.g., In re National Heritage Foundation, Inc.,* 478 B.R. 216, 229 (Bankr. E.D. Va. 2012) (finding that the performance by directors and officers of duties consistent with their preexisting fiduciary duties and job responsibilities, without having made any financial contribution, is insufficient to demonstrate a substantial contribution warranting approval of third-party release); *In re SL Liquidating, Inc.,* 428 B.R. 799, 804 (Bankr. S.D. Ohio 2010) (concluding that directors and officers did not make a substantial contribution when their "described efforts . . . [were] consistent with their preexisting fiduciary duties and job responsibilities.").

35. The Non-Debtor Defendants, as *former* directors and officers, could not possibly have aided in the Debtors' prior reorganization efforts, the formulation of the Plan, or the liquidation process. Nor have the Debtors identified any financial contribution provided by the Non-Debtor Defendants in exchange for the Third-Party Release. Thus, this factor weighs against approving the Third-Party Release of the Non-Debtor Defendants.

36. ***<u>Factor III</u>*** – Under the third *Dow Corning* factor, the Court must consider whether the Debtors have demonstrated that the Third-Party Release of the Non-Debtor Defendants is "essential to reorganization," such that the reorganization hinges on the Non-

Debtor Defendants being relieved of direct claims against them. The Third-Party Release is not part of any reorganization effort by the Debtors because the Plan is now a liquidating plan. *See In re Railworks,* 345 B.R. 529, 536 (Bankr. D. Md. 2006) (a bankruptcy court may release the liabilities of non-debtors only "in certain circumstances," and where the injunction "*is essential to a workable reorganization*") (citation omitted) (emphasis added). Therefore, because the Plan no longer involves any reorganization effort, the Third-Party Release cannot be essential, which it never was in the first place. *In re Neogenix Oncology,* 508 B.R. 345, 359 (Bankr. D. Md. 2014) ("***The Plan is a liquidating plan; the Debtor is not reorganizing.*** All of the Debtor's assets have been sold (other than litigation claims) and ***the Plan will not affect the operation of those assets or any reorganization effort. Thus, the [third-party] Release Provision is not essential to the Debtor's reorganization*****.")** (emphasis added).

37. Furthermore, a suit against the Non-Debtor Defendants would have no effect on the Debtors given the Debtors' assumption of the D&O Liability Insurance Policies and the fact that the Plan contains a severability clause. The Plan expressly provides that, should the court determine that "*any term or provision* of the Plan" is invalid, void, or unenforceable, the remainder of the Plan remains in effect. *See* Plan, Art. VII.J. (emphasis added). As the Fourth Circuit recognized in *Highbourne*, the presence of a severability clause "suggests that [a] plan would remain viable absent the release provision." 760 F.3d at 349.

38. In light of the fact that (a) the Plan is a liquidating plan, (b) the Debtors are assuming the D&O Liability Insurance Policies, (c) the Plan contains a severability clause, and (d) there is no indication that the Debtors could not confirm and consummate the Plan without gratuitously releasing the claims asserted against the Non-Debtor Defendants in the Securities

Litigation, this factor weighs against approving the Third-Party Release of the Non-Debtor Defendants.

39. ***Factor IV*** – Under the fourth *Dow Corning* factor, the Court must determine that each class affected by the Third-Party Release "overwhelmingly voted in favor of the Plan." The Debtors cannot satisfy this factor with respect to Class 8, because *Class 8 is deemed to reject the Plan*. The Debtors nevertheless contend that the Third-Party Release is supported by the Debtors' creditors, and that members of the Proposed Class were provided with an opportunity to exercise their opt out rights because the Debtors claim to have sent them a form that, under the circumstances, they had no reason to know they should read.[13] This assertion is a red herring. Class 8 did not "overwhelmingly vote[] in favor of the Plan" because Class 8 did not vote at all. Class 8 was deemed, as a whole, to reject the Plan. Therefore, this factor weighs against approving the Third-Party Release of the Non-Debtor Defendants and confirmation of the Plan.

40. ***Factor V*** – Under the fifth *Dow Corning* factor, the Court must determine whether the Plan provides a mechanism to consider and pay all or substantially all of the class or classes affected by the non-debtor release. As the Fourth Circuit made clear in *Highbourne*, "***the absence of such a mechanism can weigh against the validity of a non-debtor release, especially when the result is that the impacted class's claims are extinguished entirely***." *Id.* at 351 (emphasis added). That controlling precedent squarely applies here. Class 8 is receiving nothing under the Plan, potentially leaving Lead Plaintiffs and the Proposed Class with just one potential source of recovery in the Securities Litigation: their claims against the Non-Debtor Defendants.[14] In its current form, the Third-Party Release threatens to strip Lead Plaintiffs and

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[13] *See* Omnibus Response, ¶ 25.

[14] As discussed below, Lead Plaintiffs also assert that the Class Claims against the Debtors should be preserved to the extent of available insurance coverage, if any.

the Proposed Class of those claims for no cognizable reason and with no compensation. Clearly, this factor weighs against approving the Third-Party Release of the Non-Debtor Defendants.

41. ***Factor VI*** – Under the final applicable *Dow Corning* factor, the Court must determine whether the Plan provides an opportunity for those who chose not to settle to recover in full. Stated differently, ***the Plan must "provide an opportunity for non-consenting creditors to recover in full."*** *In re City of Detroit*, 524 B.R. 147, 175 (Bankr. E.D. Mich. 2014). Through the Third-Party Release, the Plan does the exact opposite, depriving Lead Plaintiffs and the Proposed Class of any opportunity to recover at all. This factor weighs against approving the Third-Party Release of the Non-Debtor Defendants.

42. All the relevant *Dow Corning* factors weigh heavily against approval of the Third-Party Release of the Non-Debtor Defendants. Given the Fourth Circuit's directive that non-debtor releases should be "granted cautiously and infrequently," *see Behrmann*, 663 F.3d at 711, the Third-Party Release of the Non-Debtor Defendants is inappropriate. As a result, the Plan cannot be confirmed unless the claims asserted against the Non-Debtor Defendants in the Securities Litigation are excluded from the effect of the Third-Party Release. The illusory and engineered consent that the Debtors claim is belied by the total absence of any of the *Dow Corning* factors to support such a gratuitous release.

B. The "opt-out" mechanism in the Third-Party Release is inappropriate as applied to members of the Proposed Class.

43. The Opt-Out Election Notice is nothing more than an artifice for the Debtors to pretend that members of the Proposed Class have consented to the Third-Party Release simply because they did not return a form that, even if they received it (which is questionable at best), they had no reason to know would affect them at all. Indeed, the mere existence of this artificial

and engineered "consent" mechanism demonstrates the Debtors' acknowledgement of their failure to come anywhere close to satisfying the *Dow Corning* factors.

44. Inverting the means of manifesting consent demonstrates beyond any reasonable dispute that the opt-out mechanism is nothing more than a trap for the unwary: If the Third-Party Release instead required affected creditors to opt *in* (i.e., to mail the Debtors a form affirmatively indicating their consent to the release), no reasonable, fully informed member of the Proposed Class would ever do so, because no reasonable, fully informed investor would ever deliberately forfeit valuable claims against the solvent, insured Non-Debtor Defendants in exchange for absolutely nothing. *See In re Chassix Holdings, Inc.*, 533 B.R. 64, 78 (Bankr. S.D.N.Y. 2015). The *Chassix* court observed that:

> The purpose of the "opt-out" and "deemed consent" voting rules that the Debtors proposed was to aid the parties in compiling a broader set of third party releases than might be obtained if a different, "affirmative consent" approach were adopted. The proposed procedures would have done so by ***deeming "consent" to exist in situations where no affirmative consent had actually been manifested. Finding "consent" in these circumstances is to some extent a legal fiction. We know from experience that many creditors and interest holders who receive disclosure statements and solicitation materials simply will not respond to them, either because they elect not to read them at all or for other reasons.*** . . . The point is that inattentiveness, inaction and mistake are a known and expected part of the voting process.

Id. at 78 (emphasis added)*; see also In re SunEdison, Inc.*, 576 B.R. 453, 460 (Bankr. S.D.N.Y. 2017); *In re Aegean Marine Petroleum Network Inc.*, Case No. 18-13374-mew (Bankr. S.D.N.Y.), Transcript of Hearing Held Feb. 14, 2019 (the "Aegean Transcript").[15]

45. The *Aegean Marine* court criticized the impropriety of a similar effort to use an opt-out mechanism to fabricate "judicial deemed consent" to a third-party release by, among others, holders of securities fraud claims:

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[15] The relevant pages of the Aegean Transcript are annexed hereto as **Exhibit A**.

> This is all about consent and what consent means, right? So you're basically urging me to say that you need me to manufacture consent for you because we know, we know in every one of these cases, there are people who are going to get this big package and they're not going to open it, or even if they open it, they're not going to understand it, and they're not going to respond. We know that. ***So all that this opt-out approach does is it seeks to manufacture judicial deemed consent without an actual thought process on behalf of the person whose consent is being sought.***
>
> As I said in *Chassix*, there are times in the law when policies put that burden on people. The law supports class actions. It supports it for the purpose of judicial efficiency. And so it puts on people the burden of opting out, otherwise, they're included. ***There is no such policy in favor of releases. In fact, the policy is the opposite.*** What I'm told [in] Metromedia is that they ought to be rare. . . .
>
> ***If we're going to seek consent, it ought to be real consent***, and it should be on an opt-in basis, not an opt-out basis.

Aegean Transcript at 28:1-29:6 (emphasis added). The *SunEdison* court similarly observed that

> The Debtors' argument that the Non-Voting Releasors' silence should be deemed their consent to the Release is not persuasive because the Debtors have not identified the source of their duty to speak. The Debtors do not contend that an ongoing course of conduct with their creditors gave rise to a duty to speak. . . .
>
> Instead, the Debtors essentially contend that the warning in the Disclosure Statement and the ballots regarding the potential effect of silence gave rise to a duty to speak, and the Non-Voting Releasors' failure to object to or reject the Plan should be treated as their deemed consent to the Release. Indeed, this appears to be the unspoken rationale of the authorities cited by the Debtors. ***The Debtors have failed, however, to show that the Non-Voting Releasors' silence was misleading or that it signified their consent to the Release. There are other plausible inferences that support the opposite inference. For example, the meager recoveries (here, less than 3% for the unsecured creditors) may explain their inaction without regard to the Release.***

SunEdison, 576 B.R. at 460-61 (emphasis added).

46. The circumstances here are even more egregious. In *SunEdison,* unsecured creditors were at least receiving *something* under the plan, yet the court noted that their miniscule recovery (not their magnanimous desire to grant a gratuitous third-party release) was a plausible

explanation for the fact that they did not vote. In *Chassix,* unsecured creditors faced the possibility of losing their distributions if their class did not accept the plan – but if their class did accept the plan, they stood to receive meaningful distributions.

47. By contrast, Lead Plaintiffs and the Proposed Class are receiving nothing under the Plan, and thus are *not even entitled to vote*. The opt-out mechanism is designed solely to engineer deemed "consent" that no rational, fully informed Proposed Class member would ever voluntarily give. Members of the Proposed Class – to the extent they are even aware of the Chapter 11 Cases or the Plan at all – have little reason to do anything with respect to the Plan, much less find, review, and decipher a convoluted Third-Party Release, an exercise requiring sophisticated bankruptcy counsel to fully understand. The proposed opt-out mechanism is simply a means of manufacturing illusory "consent" to a release that would amount to the "Court-endorsed trap for the careless or inattentive creditor" the *Chassix* court decried. 533 B.R. at 79. "If . . . a Bankruptcy Court should be wary of imposing third party releases on creditors, then a Bankruptcy Court should be equally wary of approving voting procedures that effectively would impose those same releases on creditors who have not affirmatively manifested their consent to them." *Id.*

C. The Debtors have not provided Proposed Class members with notice of the impact of the Third-Party Release and Opt-Out Election Form.

48. It is axiomatic that a court cannot alter the rights of parties who have not been given due process in the form of adequate notice and a fair opportunity to object. *See Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314-15 (1950). In *Mullane*, the Supreme Court held that:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

> present their objections . . . . The notice must be of such nature as reasonably to convey the required information . . . and it must afford a reasonable time for those interested to make their appearance . . . .

339 U.S. at 314 (internal citations omitted).

49. Even if the opt-out mechanism in the Third-Party Release were appropriate, which it is not, the Third-Party Release nevertheless could not be approved because the Debtors failed to provide adequate notice of the Third-Party Release or the Opt-Out Election Form to all Proposed Class members. The Debtors sent the Impaired Non-Voting Notice and Opt-Out Election Form to a number of nominee brokers and mailing agents with a request to pass these documents along to Proposed Class members. *See* Docket No. 720. However, in the absence of a court order directing the nominees and mailing agents to forward the Impaired Non-Voting Notice and Opt-Out Election Form to members of the Proposed Class, the Debtors' request had no more force than a mere suggestion. That obviously is not a sufficient means of effectuating notice on prior securities purchasers.

D. The Impaired Non-Voting Notice and Opt-Out Election Form contained insufficient information for any Proposed Class members who did receive them to understand the scope and consequences of the Third-Party Release.

50. Irrespective of the extent to which the Impaired Non-Voting Notice and Opt-Out Election Form may have been served, the documents themselves made no mention whatsoever of the Securities Litigation, the Proposed Class, the Class Period, or the fact that the Third-Party Release is intended to release Proposed Class members' claims against the Non-Debtor Defendants in the Securities Litigation.

51. Instead, the Impaired Non-Voting Notice and Opt-Out Election Form completely obfuscate the nature and extent of the claims the Debtors seek to release through the Third-Party Release, requiring Proposed Class members – who are receiving nothing under the Plan and are

not entitled to vote – not only read a notice from the Debtors, but also locate and review the Plan and other complex documents *that were not served on members of the Proposed Class*. This convoluted procedure is the diametrical opposite of the means "such as one desirous of actually informing the [Class] might reasonably adopt to accomplish it." *See Mullane,* 339 U.S. at 315. The notion that a Proposed Class member who has failed to undertake such a tortuous process has somehow "consented" to granting the draconian Third-Party Release is utterly absurd.

E. Proposed Class members are not knowingly or voluntarily granting the Third-Party Release.

52. As a general matter, releases of claims arising under federal laws must be granted knowingly and voluntarily. *See, e.g., Citibank Global Markets, Inc. v. Rodriguez Santana*, 573 F.3d 17, 23 n.6 (1st Cir. 2009); *cf. Romero v. Allstate Ins. Co.*, 52 F.Supp.3d 715, 726 (3d Cir. 2014) (in the context of releases of claims arising under federal employment law, "[t]he essential question is 'whether in the totality of the circumstances, the individual's waiver of his right can be characterized as 'knowing and voluntary'") (citation omitted). Because the claims and causes of action in the Securities Litigation arise under federal statutory law, any release of those claims must be knowing and voluntary – circumstances that are impossible to infer from inaction and the artificial "consent" mechanism manufactured by the Debtors. Quite the opposite, it defies common sense to infer that Proposed Class members, who are receiving no recovery from the Debtors under the Plan, would ever knowingly and voluntarily "consent" to release their valuable claims against the Non-Debtor Defendants in exchange for absolutely nothing.

F. The Court does not have jurisdiction or constitutional adjudicatory authority to approve the Third-Party Release on a non-consensual basis.

53. The Court "cannot simply presume it has jurisdiction in a bankruptcy case to permanently enjoin third-party . . . actions against non-debtors." *Gillman v. Continental Airlines (In re Continental Airlines),* 203 F.3d 203, 214, n. 12 (3d Cir. 2000). Because the opt-out

mechanism in the Third-Party Release is merely a façade, the Third-Party Release is effectively nonconsensual. Lead Plaintiffs respectfully submit that the Court does not have jurisdiction or constitutional adjudicatory authority to release or enjoin claims of non-Debtors against other non-Debtors without voluntary and knowing consent, and thus should not confirm the Plan.

54. Bankruptcy courts have core jurisdiction over four specific types of matters: "(1) cases under [the Bankruptcy Code], (2) proceeding[s] arising under [the Bankruptcy Code], (3) proceedings arising in a case under [the Bankruptcy Code], and (4) proceedings related to a case under [the Bankruptcy Code]." *Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.),* 372 F.3d 154, 162 (3d Cir. 2004) (citation and internal quotation marks omitted); *see also* 28 U.S.C. § 1334(a)-(b).

55. A proceeding solely between non-debtor parties based on non-bankruptcy law, such as the Securities Litigation, can never fall within a bankruptcy court's "arising under" jurisdiction. Rather, such proceedings can only lie within a Bankruptcy Court's "related to" jurisdiction, and then only "if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Pacor, Inc. v. Higgins,* 743 F.2d 984, 994 (3d Cir. 1984) (citations omitted); *see also In re Combustion Eng'g, Inc.,* 391 F.3d 190, 226 (3d Cir. 2004).

56. There are two situations in which Bankruptcy Courts can have "related to" jurisdiction to release claims of non-debtors against other non-debtors. Such jurisdiction can exist where either (a) the lawsuit between non-debtors would trigger an automatic indemnification obligation on the part of the debtor, *see In re Federal-Mogul Global, Inc.,* 300 F.3d 368, 382 (3d Cir. 2002), or (b) the released non-debtor is making an essential financial

contribution to facilitate the debtor's reorganization (a very high bar, *see Combustion Eng'g,* 391 F.3d at 228).

57. Notwithstanding the generalized phrasing of the *Pacor* test, more than just a tenuous connection to a debtor's estate is necessary for an action between non-debtor third parties to fall within the Court's "related to" jurisdiction. *See Combustion Eng'g*, 391 F.3d at 226. Rather, for "related to" jurisdiction to exist under the *Pacor* test, an action between third parties must automatically impact the estate without the need for a separate action (such as a lawsuit for indemnification or contribution) to impose liability on the debtor. *See id.*

58. Neither jurisdictional predicate exists here. The Debtors have no post-confirmation indemnification obligations that could impact their estates in any way because the Non-Debtor Defendants are *former* officers and directors, and the Debtors are liquidating. Moreover, neither of the Non-Debtor Defendants are making any financial contribution to facilitate the Debtors' liquidation.

59. Bankruptcy Courts' constitutional adjudicatory authority is specific and limited, and their subject-matter jurisdiction is statutorily defined and confined to the boundaries of that definition. *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1945 (2015) (observing that "bankruptcy courts possess no free-floating authority to decide claims traditionally heard by Article III courts"); *Stern v. Marshall*, 564 U.S. 462 (2011); 28 U.S.C. § 157(a). Rather, bankruptcy courts may only enter final judgments on non-core matters with the consent of the affected parties. *Wellness*, 135 S. Ct. at 1949. Lead Plaintiffs and the Proposed Class have not consented to the summary adjudication by this Court of their direct claims against the Non-Debtor Defendants in the Securities Litigation. Those claims do not arise under the Bankruptcy Code, arise in or in any way relate to the Chapter 11 Cases, or have any connection whatsoever

to the claims administration process. As a result, this Court lacks jurisdiction and constitutional adjudicatory authority to approve a Third-Party Release that would effectuate a *de facto* adjudication or dismissal with prejudice of the claims of Lead Plaintiffs and the Proposed Class against the Non-Debtor Defendants in the Securities Litigation. *See Wellness*, 135 S. Ct. at 1945; *Stern*, 564 U.S. at 499 ("Congress may not bypass Article III simply because a proceeding may have *some* bearing on a bankruptcy case; the question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims reconciliation process."). Thus, the Plan cannot be confirmed with the Third-Party Release in its current form.

II. THE PLAN DOES NOT PROVIDE FOR THE PRESERVATION OF EVIDENCE POTENTIALLY RELEVANT TO THE SECURITIES LITIGATION AFTER THE EFFECTIVE DATE OF THE PLAN.

60. The Plan contemplates the complete liquidation of the Debtors' estates and the creation of a liquidating trust. The Bankruptcy Code provides that a debtor is required to maintain and preserve its assets (including its books and records), unless otherwise authorized by order of the Bankruptcy Court after notice and an opportunity to be heard. *See* 11 U.S.C. §§ 363(b)(1) and 554(a); *see also* Fed. R. Bankr. P. 6004 and 6007(a). In addition, Ascena was (and remains, subject to the automatic stay) a defendant in the Securities Litigation prior to the Petition Date, and thus is subject to the evidence preservation requirements of the Private Securities Litigation Reform Act (the "PSLRA") 15 U.S.C. § 77u-4(b)(3)(C).

61. The Plan, however, does not expressly provide for the preservation of any of the Debtors' books, records, or other evidence potentially relevant to the Securities Litigation after confirmation and the effective date of the Plan. Failure to preserve evidence so that it is available for discovery after the expiration of the PSLRA discovery stay would be severely prejudicial to Lead Plaintiffs and the Proposed Class – the very reason the PSLRA discovery stay

and the document preservation requirement exists. Accordingly, the Plan cannot be confirmed unless the Plan or confirmation order expressly provides for the preservation of books, records, and other evidence potentially relevant to the Securities Litigation until the final resolution thereof.

III. THE PLAN DOES NOT PRESERVE THE CLAIMS OF LEAD PLAINTIFFS AND THE PROPOSED CLASS AGAINST THE DEBTORS TO THE EXTENT OF AVAILABLE INSURANCE.

62. As of the effective date of the Plan, the Debtors "shall be deemed to have assumed all of the D&O Liability Insurance Policies (including, if applicable, any 'tail policy')" pursuant to section 365(a) of the Bankruptcy Code. *See* Plan, Art. IV.O. However, despite the Debtors' assumption of the D&O Liability Insurance Policies, the Plan does not preserve the claims of Lead Plaintiffs and the Proposed Class against the Debtors to the extent of available insurance, if any. Although Lead Plaintiffs and the Class are not entitled to any distribution from the Debtors' estates under the Plan because their claims are statutorily subordinated to general unsecured claims, there is no principled reason not to preserve their claims to the extent of available insurance under the D&O Liability Insurance Policies. The failure to do so benefits only the Debtors' insurers at the expense of Lead Plaintiffs and the Proposed Class, with no corresponding benefit to the estate or any class of creditors. The Plan should not be confirmed unless it is amended to preserve the claims of Lead Plaintiffs and the Proposed Class against the Debtors, solely to the extent of available insurance.

RESERVATION OF RIGHTS

63. This Supplemental Objection is based on the operative version of the Plan [Docket No. 1403] as of the date hereof. To the extent (a) the Plan is further amended between the filing of this Supplemental Objection and the confirmation hearing and/or (b) Lead Plaintiffs

learn additional relevant information through discovery or otherwise, Lead Plaintiffs reserve the right to augment their Supplemental Objection and/or raise additional objections to the Plan, as may be further amended, at or prior to the confirmation hearing.

64. Lead Plaintiffs reserve all rights, claims, causes of action, defenses, arguments, and counterarguments in connection with the Securities Litigation. Nothing herein is intended to or shall be deemed to waive, alter, release, or otherwise impact any such rights, claims, causes of action, defenses, arguments, or counterarguments.

CONCLUSION

65. For the reasons set forth above, the Court should not confirm the Plan unless the issues raised herein are appropriately addressed.

[*signature page follows*]

WHEREFORE, Lead Plaintiffs respectfully request that the Court decline to confirm the Plan unless the issues raised herein are adequately remedied.

Dated: February 4, 2021

Respectfully submitted,

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Bankruptcy Counsel to the Lead Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 4, 2021, I caused a copy of the foregoing to be served through the Court's EM/ECF system on all parties receiving notices in these cases. I shall also cause a copy of the foregoing to be served by email on the Core 2002 List, in the form attached hereto as **Exhibit B**, where an email address is indicated, and to be mailed by U.S. First Class Mail to the recipients where only a mailing address is indicated.

By /s/ Ronald A. Page, Jr.
Counsel

EXHIBIT A

Pages from Transcript of Hearing Held Feb. 14, 2019
In re Aegean Marine Petroleum Network Inc.
Case No. 18-13374-mew (Bankr. S.D.N.Y.)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 18-13374-mew
- x
In the Matter of:

AEGEAN MARINE PETROLEUM NETWORK INC.,

Debtor.
- x

United States Bankruptcy Court
One Bowling Green
New York, NY 10004

February 14, 2019
10:08 AM

B E F O R E :
HON MICHAEL E. WILES
U.S. BANKRUPTCY JUDGE

ECRO: MATTHEW

HEARING RE: Approval of disclosure Statement

Objections Filed

Application authorizing the employment and retention of Moelis & Company LLC as its investment banker and financial advisor for the Debtor effective nunc pro tunc to the petition date

Transcribed by: Sonya Ledanski Hyde

THE COURT: This is all about consent and what consent means, right? So you're basically urging me to say that you need me to manufacture consent for you because we know, we know in every one of these cases, there are people who are going to get this big package and they're not going to open it, or even if they open it, they're not going to understand it, and they're not going to respond. We know that. So all that this opt-out approach does is it seeks to manufacture judicial deemed consent without an actual thought process on behalf of the person whose consent is being sought.

As I said in Chassix, there are times in the law when policies put that burden on people. The law supports class actions. It supports it for the purpose of judicial efficiency. And so it puts on people the burden of opting out, otherwise, they're included. There is no such policy in favor of releases. In fact, the policy is the opposite. What I'm told me Metromedia is that they ought to be rare. They are anything but rare. I have not had a single Chapter 11 case in which people have not sought third-party releases. They're sought in every single case.

And to me, using an opt-out approach is not consistent with what Metromedia tells me to do. I know what I said in Chassix. I've been doing this job an extra almost four years now, and I'm more firmly convinced. I have never

allowed an opt-out form. I won't say that I can never be convinced that there are circumstances that require it, but nothing that you've said here convinces me that it's appropriate. If we're going to seek consent, it ought to be real consent, and it should be on an opt-in basis, not an opt-out basis.

MR. WINGER: If I may respond to a few points, Your Honor. The opt-out/opt-in issue applies to different stakeholders who frankly have a different set of facts depending on where they're sitting. So what Your Honor described, I believe, was focused on folks that are entitled to vote. They get a massive solicitation package, and they just throw it away. That is one category of folks whose consent would be deemed in the absence of taking an affirmative step.

THE COURT: Let me just say in plenty of cases, I have approved voting in favor of the plan as a consent to the releases. I'm not taking that away from you.

MR. WINGER: Correct. So --

THE COURT: I'm talking about people who fail to vote or who vote no.

MR. WINGER: So I believe we have what I'll call four or five categories where consent is the opt-out versus opt-in is relevant. Obviously, we have parties that vote to accept that is consistent with Your Honor's rulings in other

In re: Retail Group, Inc., *et al.*
Core/2002 Service List
Case No. 20-33113 (KRH)

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In re: Retail Group, Inc., *et al.*
Core/2002 Service List
Case No. 20-33113 (KRH)

DESCRIPTION	NAME	NOTICE NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	POSTAL CODE	COUNTRY	PHONE	FAX	EMAIL
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In re: Retail Group, Inc., *et al.*
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DESCRIPTION	NAME	NOTICE NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	POSTAL CODE	COUNTRY	PHONE	FAX	EMAIL
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COUNSEL TO SUNDANCE SQUARE PARTNERS, L.P.	REED SMITH LLP	ATTN: OMAR J. ALANIZ, MICHAEL P. COOLEY AND DEVAN J. DAL COL	2850 N. HARWOOD, SUITE 1500		DALLAS	TX	75201		469-680-4200	469-680-4299	OALANIZ@REEDSMITH.COM MPCOOLEY@REEDSMITH.COM DDALCOL@REEDSMITH.COM
TOP 50 CREDITOR	RICHA GLOBAL EXPORTS PVT LTD	ATTN: VIRENDER UPPAL	219, UDYOG VIHAR PHASE-I GURGAON		HARYANA		122001	INDIA	+91-124-4314000		INFO@RICHAGLOBAL.COM
COUNSEL TO THE LEAD PLAINTIFFS AND THE PROPOSED CLASS, NORTH RIVERSIDE PLAZA LIMITED PARTNERSHIP, SP BOSSIER, LLC	RONALD PAGE, PLC	ATTN: RONALD A. PAGE, JR.	P.O. BOX 73087		NORTH CHESTERFIELD	VA	23235		804-562-8704	804-482-2427	RPAGE@RPAGELAW.COM
COUNSEL TO CPBP-VII ASSOCIATES, L.P.	S&D LAW	ATTN: STEVEN W. KELLY, ESQ.	1290 BROADWAY	SUITE 1650	DENVER	CO	80203				
COUNSEL TO WILSON GARDENS HAVANA, LLC	S&D LAW	ATTN: STEVEN W. KELLY, ESQ.	1290 BROADWAY, SUITE 1650		DENVER	CO	80203				
TOP 50 CREDITOR	SAE A TRADING CO. LTD	ATTN: WOONG-KI KIM	SAE-A BLDG.	429 YEONGDONG-DAERO GANGNAM-GU	SEOUL			KOREA	+82 2 6252 7000	+82-2-6252-7005	
COUNSEL TO SAS INSITIUTE INC.	SAS INSITIUTE INC.	ATTN: H HOWARD BROWNE, KAREN DAY	100 SAS CAMPUS DRIVE		CARY	NC	27513		919-531-7748	919-677-4444	HOWARD.BROWNE@SAS.COM KAREN.DAY@SAS.COM
COUNSEL TO RIVERDALE CENTER OWNER, IV, L.C.	SCALLEY READING BATES HANSEN & RASMUSSEN, P.C.	ATTN: DARWIN H. BINGHAM	15 WEST SOUTH TEMPLE, SUITE 600		SALT LAKE CITY	UT	84101		801-531-7870	801-326-4669	dbingham@scalleyreading.net
COUNSEL TO A. BONADUCE INC., D/B/A EBS BUILDERS	SCARINCI & HOLLENBECK, LLC	ATTN: JOEL R. GLUCKSMAN, ESQ.	1100 VALLEY BROOK AVENUE	P.O. BOX 790	LYNDHURST	NJ	07071-0790		201-896-4100		JGLUCKSMAN@SH-LAW.COM
COUNSEL TO BLUESTAR ALLIANCE LLC & JUSTICE BRAND HOLDINGS LLC	SCHULTE ROTH & ZABEL LLP	ATTN: KRISTINE MANOUKIAN, DANIEL ESINER, KELLY KNIGHT	919 THIRD AVENUE		NEW YORK	NY	10022		212-756-2000	212-593-5955	KRISTINE.MANOUKIAN@SRZ.COM DANIEL.EISNER@SRZ.COM KELLY.KNIGHT@SRZ.COM
US SECRETARY OF TREASURY	SECRETARY OF TREASURY	ATTN: LEGAL DEPARTMENT	1500 PENNSYLVANIA AVE, NW		WASHINGTON	DC	20220		202-622-2000	202-622-6464202-622-6415	
SECURITIES AND EXCHANGE COMMISSION HEADQUARTERS	SECURITIES AND EXCHANGE COMMISSION	ATTN: GENERAL COUNSEL	100 F ST., NE		WASHINGTON	DC	20549		202-551-6061	202-772-9180	SECBANKRUPTCY@SEC.GOV
SECURITIES AND EXCHANGE COMMISSION PHILADELPHIA DIVISION	SECURITIES AND EXCHANGE COMMISSION	ATTN: SHARON BINGER REGIONAL DIRECTOR	ONE PENN CENTER	1617 JFK BLVD., SUITE 520	PHILADELPHIA	PA	19103		215-597-3100		PHILADELPHIA@SEC.GOV
COUNSEL TO ARBORETUM MARKET INVESTMENT GROUP, INC. AND THE COMMONS AT WILLOWBROOK, INC.	SETTLEPOU	ATTN: WILL G. BASSHAM, ESQ.	3333 LEE PARKWAY	8TH FLOOR	DALLAS	TX	75219		214-560-1705	214-526-4145	WBASSHAM@SETTLEPOU.COM
COUNSEL TO 171 EAST 84TH OWNERS LLC	SHAPIRO SHER GUINOT & SANDLER	ATTN: SCOTT W. FOLEY, ESQUIRE, JOEL I. SHER, ESQUIRE	250 W. PRATT STREET, SUITE 2000		BALTIMORE	MD	21201		410-385-4234; 410-385-4277	410-539-7611	SWF@SHAPIROSHER.COM JIS@SHAPIROSHER.COM
TOP 50 CREDITOR AND COUNSEL	SIMON PROPERTY GROUP, INC.	ATTN: DAVID SIMON AND RONALD M. TUCKER	225 WEST WASHINGTON STREET		INDIANAPOLIS	IN	46204		317-263-2346	317-636-1600; 317-263-7901	RTUCKER@SIMON.COM
COUNSEL TO RED DEVELOPMENT, LLC	SINGER & LEVICK, P.C.	ATTN: MICHELLE E. SHRIRO	16200 ADDISON ROAD	SUITE 140	ADDISON	TX	75001		972-380-5533	972-380-5748	MSHRIRO@SINGERLEVICK.COM
COUNSEL TO PAOLI SHOPPING CENTER LIMITED PARTNERSHIP	SIRLIN LESSER & BENSON, P.C.	ATTN: DANA S. PLON	123 SOUTH BROAD STREET, SUITE 2100		PHILADELPHIA	PA	19109		215-864-9700		DPLON@SIRLINLAW.COM
COUNSEL TO BERKLEY INSURANCE COMPANY AND BERKLEY REGIONAL INSURANCE COMPANY	SMITH, CURRIE & HANCOCK LLP	ATTN: SHANNON J. BRIGLIA	1950 OLD GALLOWS ROAD, SUITE 750		TYSONS	VA	22182		703-506-1990	703-506-1140	SJBRIGLIA@SMITHCURRIE.COM
TOP 50 CREDITOR, OFFICIAL COMMITTEE OF UNSECURED CREDITORS	SNOGEN GREEN CO.,LTD	ATTN: JUNGKU HONG	13F GANGNAM BUILDING; 396, SEOCHO-DAERO, SEOCHO-GU		SEOUL		06619	KOREA	+02-6496-6400	+02-6496-6501	
COUNSEL TO SODEXO OPERATIONS, LLC	SODEXO, INC.	ATTN: ANTOINETTE YOUNG, ESQ.	9801 WASHINGTONIAN BLVD, 12TH FLOOR		GAITHERSBURG	MD	20878		301-987-4521	301-830-6103	ANTOINETTE.YOUNG@SODEXO.COM
TOP 50 CREDITOR	SOLVE IT CO., LTD	ATTN: PRESIDENT OR GENERAL COUNSEL	3/F 556 CHEONHO-DAERO		GWANGJIN-GU SEOUL		143847	SOUTH KOREA	+82-24536868		
TOP 50 CREDITOR	SOUTH ASIA KNITTING FTY LTD (NEW)	ATTN: PRESIDENT OR GENERAL COUNSEL	17/F, SOUTH ASIA BUILDING	108 HOW MING STREET KWUN TONG	KOWLOON			HONG KONG	852-2345-0261	852-2343-3666	LEOYEUNG@SOUTHASIAGROUP.COM
COUNSEL TO RIVERWALK MARKETPLACE (NEW ORLEANS), LLC AND THE SHOPS AT SUMMERLIN NORTH, LP	SPECTOR & COX, PLLC	ATTN: HOWARD MARC SPECTOR, SARAH M. COX	12770 COIT ROAD	SUITE 1100	DALLAS	TX	75251		214-365-5377; 214-310-1321	214-237-3380	HSPECTOR@SPECTORCOX.COM SARAH@SPECTORCOX.COM
COUNSEL TO 156 FIFTH AVENUE CORP	SPOTTS FAIN PC	ATTN: ROBERT H. CHAPPELL III, NEIL E. MCCULLAGH AND KARL A. MOSES, JR	411 EAST FRANKLIN STREET, SUITE 600		RICHMOND	VA	23219		804-697-2000	804-697-2100	RCHAPPELL@SPOTTSFAIN.COM NMCCULLAGH@SPOTTSFAIN.COM KMOSES@SPOTTSFAIN.COM
COUNSEL TO LCFRE SUGAR LAND TOWN SQUARE, LLC	SPROUSE LAW FIRM	ATTN: MARVIN E. SPROUSE III	901 MOPAC EXPRESSWAY SOUTH	BUILDING 1, SUITE 300	AUSTIN	TX	78746		512-658-1915		MSPROUSE@SPROUSEPLLC.COM
COUNSEL TO TAINAN ENTERPRISES CO., LTD.	SQUIRE PATTON BOGGS (US) LLP	ATTN: NORMAN N. KINEL	1211 AVENUE OF THE AMERICAS	26TH FLOOR	NEW YORK	NY	10136		212-872-9800	212-872-9815	NORMAN.KINEL@SQUIREPB.COM
COUNSEL TO GATEWAY AFTON RIDGE, INC. AND TMT BEAR CREEK SHOPPING CENTER, INC.	SSL LAW FIRM LLP	ATTN: IVO KELLER, ESQ., BRENT D. MEYER, ESQ.	505 MONTGOMERY STREET	SUITE 620	SAN FRANCISCO	CA	94111		415-814-6400	415-814-6401	IVO@SSLLAWFIRM.COM BMEYER@SSLLAWFIRM.COM
COUNSEL TO LEVIN MANAGEMENT CORPORATION	STARK & STARK, P.C.	ATTN: THOMAS S. ONDER & JOSEPH H. LEMKIN	P.O. BOX 5315		PRINCETON	NJ	08543		609-219-7458; 609-896-0629	609-791-7022; 609-896-0629	TONDER@STARK-STARK.COM JLEMKIN@STARK-STARK.COM
STATE OF ALABAMA ATTORNEY GENERAL	STATE OF ALABAMA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	P.O. BOX 300152		MONTGOMERY	AL	36130-0152		334-242-7300	334-242-2433	

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STATE OF ALBERTA ATTORNEY GENERAL	STATE OF ALBERTA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	BOWKER BUILDING 2ND FLOOR - 9833 109 STREET NW		EDMONTON	AB	T5K 2E8	CANADA			
STATE OF ARIZONA ATTORNEY GENERAL	STATE OF ARIZONA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	2005 N CENTRAL AVE		PHOENIX	AZ	85004-2926		602-542-5025	602-542-4085	AGINFO@AZAG.GOV
STATE OF ARKANSAS ATTORNEY GENERAL	STATE OF ARKANSAS ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	323 CENTER ST.	SUITE 200	LITTLE ROCK	AR	72201-2610		501-682-2007	501-682-8084	
STATE OF CALIFORNIA ATTORNEY GENERAL	STATE OF CALIFORNIA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	P.O. BOX 944255		SACRAMENTO	CA	94244-2550		916-445-9555	916-323-5341	BANKRUPTCY@COAG.GOV
STATE OF COLORADO ATTORNEY GENERAL	STATE OF COLORADO ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	RALPH L. CARR COLORADO JUDICIAL CENTER	1300 BROADWAY, 10TH FLOOR	DENVER	CO	80203		720-508-6000	720-508-6030	
STATE OF CONNECTICUT ATTORNEY GENERAL	STATE OF CONNECTICUT ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	55 ELM ST.		HARTFORD	CT	06106		860-808-5318	860-808-5387	ATTORNEY.GENERAL@CT.GOV
STATE OF DELAWARE ATTORNEY GENERAL	STATE OF DELAWARE ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	CARVEL STATE OFFICE BLDG.	820 N. FRENCH ST.	WILMINGTON	DE	19801		302-577-8338	302-577-6630	ATTORNEY.GENERAL@STATE.DE.US
STATE OF FLORIDA ATTORNEY GENERAL	STATE OF FLORIDA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	THE CAPITOL, PL 01		TALLAHASSEE	FL	32399-1050		850-414-3300	850-488-4872	
STATE OF GEORGIA ATTORNEY GENERAL	STATE OF GEORGIA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	40 CAPITAL SQUARE, SW		ATLANTA	GA	30334-1300		404-656-3300	404-657-8733	
STATE OF HAWAII ATTORNEY GENERAL	STATE OF HAWAII ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	425 QUEEN ST.		HONOLULU	HI	96813		808-586-1500	808-586-1239	HAWAIIAG@HAWAII.GOV
STATE OF IDAHO ATTORNEY GENERAL	STATE OF IDAHO ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	700 W. JEFFERSON STREET	P.O. BOX 83720	BOISE	ID	83720-1000		208-334-2400	208-854-8071	
STATE OF ILLINOIS ATTORNEY GENERAL	STATE OF ILLINOIS ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	100 WEST RANDOLPH STREET		CHICAGO	IL	60601		312-814-3000		WEBMASTER@ATG.STATE.IL.US
STATE OF INDIANA ATTORNEY GENERAL	STATE OF INDIANA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	INDIANA GOVERNMENT CENTER SOUTH	302 W. WASHINGTON ST., 5TH FLOOR	INDIANAPOLIS	IN	46204		317-232-6201	317-232-7979	INFO@ATG.IN.GOV
STATE OF IOWA ATTORNEY GENERAL	STATE OF IOWA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	1305 E. WALNUT STREET		DES MOINES	IA	50319		515-281-5164	515-281-4209	WEBTEAM@AG.IOWA.GOV
STATE OF KANSAS ATTORNEY GENERAL	STATE OF KANSAS ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	120 SW 10TH AVE., 2ND FLOOR		TOPEKA	KS	66612-1597		785-296-2215	785-296-6296	
STATE OF KENTUCKY ATTORNEY GENERAL	STATE OF KENTUCKY ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	700 CAPITOL AVENUE, SUITE 118		FRANKFORT	KY	40601		502-696-5300	502-564-2894	
STATE OF LOUISIANA ATTORNEY GENERAL	STATE OF LOUISIANA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	P.O. BOX 94095		BATON ROUGE	LA	70804-4095		225-326-6000	225-326-6499	CONSUMERINFO@AG.STATE.LA.US
STATE OF MAINE ATTORNEY GENERAL	STATE OF MAINE ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	6 STATE HOUSE STATION		AUGUSTA	ME	04333-0000		207-626-8800		CONSUMER.MEDIATION@MAINE.GOV
STATE OF MANITOBA MINISTER OF JUSTICE	STATE OF MANITOBA MINISTER OF JUSTICE	ATTN: SEAN BOYD, CROWN COUNSEL	LEGAL SERVICES BRANCH	730-405 BROADWAY	WINNIPEG	MB	R3C 3L6	CANADA			
STATE OF MARYLAND ATTORNEY GENERAL	STATE OF MARYLAND ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	200 ST. PAUL PLACE		BALTIMORE	MD	21202-2202		410-576-6300		OAG@OAG.STATE.MD.US
STATE OF MASSACHUSETTS ATTORNEY GENERAL	STATE OF MASSACHUSETTS ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	ONE ASHBURTON PLACE		BOSTON	MA	02108-1698		617-727-2200		AGO@STATE.MA.US
STATE OF MICHIGAN ATTORNEY GENERAL	STATE OF MICHIGAN ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	G. MENNEN WILLIAMS BUILDING, 7TH FLOOR	525 W. OTTAWA ST. P.O. BOX 30212	LANSING	MI	48909-0212		517-373-1110	517-373-3042	MIAG@MICHIGAN.GOV
STATE OF MINNESOTA ATTORNEY GENERAL	STATE OF MINNESOTA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	1400 BREMER TOWER	445 MINNESOTA STREET	ST. PAUL	MN	55101-2131		651-296-3353		
STATE OF MISSISSIPPI ATTORNEY GENERAL	STATE OF MISSISSIPPI ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	WALTER SILLERS BUILDING	550 HIGH STREET, SUITE 1200 P.O. BOX 220	JACKSON	MS	39201		601-359-3680		
STATE OF MISSOURI ATTORNEY GENERAL	STATE OF MISSOURI ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	SUPREME COURT BUILDING	207 W. HIGH ST.	JEFFERSON CITY	MO	65102		573-751-3321	573-751-0774	ATTORNEY.GENERAL@AGO.MO.GOV
STATE OF MONTANA ATTORNEY GENERAL	STATE OF MONTANA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	215 N SANDERS, THIRD FLOOR	PO BOX 201401	HELENA	MT	59620-1401		406-444-2026	406-444-3549	CONTACTDOJ@MT.GOV

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STATE OF NEBRASKA ATTORNEY GENERAL	STATE OF NEBRASKA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	2115 STATE CAPITOL	2ND FL, RM 2115	LINCOLN	NE	68509-8920		402-471-2683	402-471-3297	AGO.INFO.HELP@NEBRASKA.GOV
STATE OF NEVADA ATTORNEY GENERAL	STATE OF NEVADA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	100 NORTH CARSON STREET		CARSON CITY	NV	89701		775-684-1100	775-684-1108	AGINFO@AG.NV.GOV
STATE OF NEW BRUNSWICK ATTORNEY GENERAL	STATE OF NEW BRUNSWICK ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	CHANCERY PLACE FLR 2	P. O. BOX 6000	FREDERICTON	NB	E3B 5H1	CANADA			
STATE OF NEW HAMPSHIRE ATTORNEY GENERAL	STATE OF NEW HAMPSHIRE ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	33 CAPITOL ST.		CONCORD	NH	03301-0000		603-271-3658	603-271-2110	ATTORNEYGENERAL@DOJ.NH.GOV
STATE OF NEW JERSEY ATTORNEY GENERAL	STATE OF NEW JERSEY ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	RJ HUGHES JUSTICE COMPLEX	25 MARKET STREET P.O. BOX 080	TRENTON	NJ	08625-0080		609-292-4925	609-292-3508	ASKCONSUMERAFFAIRS@LPS.STATE.NJ.US
STATE OF NEW MEXICO ATTORNEY GENERAL	STATE OF NEW MEXICO ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	P.O. DRAWER 1508		SANTA FE	NM	87504-1508		505-827-6000	505-827-5826	
STATE OF NEW YORK ATTORNEY GENERAL	STATE OF NEW YORK ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	THE CAPITOL		ALBANY	NY	12224-0341		518-776-2000	866-413-1069	
STATE OF NORTH CAROLINA ATTORNEY GENERAL	STATE OF NORTH CAROLINA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	9001 MAIL SERVICE CENTER		RALEIGH	NC	27699-9001		919-716-6400	919-716-6750	
STATE OF NORTH DAKOTA ATTORNEY GENERAL	STATE OF NORTH DAKOTA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	STATE CAPITOL	600 E BOULEVARD AVE DEPT 125	BISMARCK	ND	58505-0040		701-328-2210	701-328-2226	NDAG@ND.GOV
STATE OF NOVA SCOTIA ATTORNEY GENERAL	STATE OF NOVA SCOTIA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	1690 HOLLIS ST		HALIFAX	NS	B3J 2L6	CANADA			
STATE OF OHIO ATTORNEY GENERAL	STATE OF OHIO ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	30 E. BROAD ST., 14TH FLOOR		COLUMBUS	OH	43215		800-282-0515		
STATE OF OKLAHOMA ATTORNEY GENERAL	STATE OF OKLAHOMA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	313 NE 21ST STREET		OKLAHOMA CITY	OK	73105		405-521-3921	405-521-6246	
STATE OF ONTARIO ATTORNEY GENERAL	STATE OF ONTARIO ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	MCMURTRY-SCOTT BUILDING	720 BAY ST	TORONTO	ON	M7A 2S9	CANADA			
STATE OF OREGON ATTORNEY GENERAL	STATE OF OREGON ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	1162 COURT STREET NE		SALEM	OR	97301		503-378-4400	503-378-4017	CONSUMER.HOTLINE@DOJ.STATE.OR.US
STATE OF PENNSYLVANIA ATTORNEY GENERAL	STATE OF PENNSYLVANIA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	STRAWBERRY SQUARE	16TH FLOOR	HARRISBURG	PA	17120		717-787-3391	717-787-8242	
STATE OF PUERTO RICO ATTORNEY GENERAL	STATE OF PUERTO RICO ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	APARTADO 9020192		SAN JUAN	PR	00902-0192		787-721-2900	787-729-2059	
STATE OF RHODE ISLAND ATTORNEY GENERAL	STATE OF RHODE ISLAND ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	150 SOUTH MAIN STREET		PROVIDENCE	RI	02903-0000		401-274-4400		
STATE OF SASKATCHEWAN ATTORNEY GENERAL	STATE OF SASKATCHEWAN ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	1874 SCARTH STREET	9TH FLOOR	REGINA	SK	S4P 4B3	CANADA	306-798-4163		LINDA.CHRISTENSEN@GOV.SK.CA
STATE OF SOUTH CAROLINA ATTORNEY GENERAL	STATE OF SOUTH CAROLINA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	P.O. BOX 11549		COLUMBIA	SC	29211-1549		803-734-3970		
STATE OF SOUTH DAKOTA ATTORNEY GENERAL	STATE OF SOUTH DAKOTA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	1302 EAST HIGHWAY 14	SUITE 1	PIERRE	SD	57501-8501		605-773-3215	605-773-4106	CONSUMERHELP@STATE.SD.US
STATE OF TENNESSEE ATTORNEY GENERAL	STATE OF TENNESSEE ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT, LAURA L. MCCLOUD	P.O. BOX 20207		NASHVILLE	TN	37202-0207		615-741-3491; 615-532-8933	615-741-3334	CONSUMER.AFFAIRS@TN.GOV LAURALEA.MCCLOUD@AG.TN.GOV
STATE OF TEXAS ATTORNEY GENERAL, COUNSEL TO THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, REVENUE ACCOUNTING DIVISION	STATE OF TEXAS ATTORNEY GENERAL, BANKRUPTCY & COLLECTIONS DIVISION MC 008	ATTN: BANKRUPTCY DEPT, COURTNEY J. HULL, ASSISTANT ATTORNEY GENERAL, JASON B. BINFORD, ABIGAIL RYAN	CAPITOL STATION	P.O. BOX 12548	AUSTIN	TX	78711-2548		512-475-4868, 512-475-4862, 512-463-2173	512-475-2994, 512-936-1409	PUBLIC.INFORMATION@OAG.STATE.TX.US COURTNEY.HULL@OAG.TEXAS.GOV JASON.BINFORD@OAG.TEXAS.GOV ABIGAIL.RYAN@OAG.TEXAS.GOV
STATE OF UTAH ATTORNEY GENERAL	STATE OF UTAH ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	PO BOX 142320		SALT LAKE CITY	UT	84114-2320		801-538-9600	801-538-1121	UAG@UTAH.GOV
STATE OF VERMONT ATTORNEY GENERAL	STATE OF VERMONT ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	109 STATE ST.		MONTPELIER	VT	05609-1001		802-828-3171	802-304-1014	AGO.INFO@VERMONT.GOV
STATE OF VIRGINIA ATTORNEY GENERAL	STATE OF VIRGINIA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	900 EAST MAIN STREET		RICHMOND	VA	23219		804-786-2071	804-225-4378	
STATE OF WASHINGTON ATTORNEY GENERAL	STATE OF WASHINGTON ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	1125 WASHINGTON ST. SE	P.O. BOX 40100	OLYMPIA	WA	98504-0100		360-753-6200		
STATE OF WEST VIRGINIA ATTORNEY GENERAL	STATE OF WEST VIRGINIA ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	STATE CAPITOL BLDG 1 ROOM E 26		CHARLESTON	WV	25305		304-558-2021	304-558-0140	CONSUMER@WVAGO.GOV
STATE OF WISCONSIN ATTORNEY GENERAL	STATE OF WISCONSIN ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	WISCONSIN DEPARTMENT OF JUSTICE	STATE CAPITOL, ROOM 114 EAST P. O. BOX 7857	MADISON	WI	53707-7857		608-266-1221	608-267-2223	
STATE OF WYOMING ATTORNEY GENERAL	STATE OF WYOMING ATTORNEY GENERAL	ATTN: BANKRUPTCY DEPT	123 CAPITOL BUILDING	200 W. 24TH STREET	CHEYENNE	WY	82002		307-777-7841	307-777-6869	
COUNSEL TO 850 THIRD AVENUE OWNER LLC AND AM 150 E 42 REALTY LLC AND 150 E 42 REALTY LLC AND VULCAN PROPERTIES, INC.	STINSON LLP	ATTN: DARRELL CLARK, MICHAEL E. TUCCI, TRACEY M. OHM	1775 PENNSYLVANIA AVENUE, NW	SUITE 800	WASHINGTON	DC	20006-4605		202-785-9100; 202-728-3008	202-572-9948	DARRELL.CLARK@STINSON.COM MICHAEL.TUCCI@STINSON.COM TRACEY.OHM@STINSON.COM
COUNSEL TO BBK EASTON OFFICE, LLC	STUTZMAN, BROMBERG, ESSERMAN & PLIFKA	ATTN: PETER C. D'APICE, CLIFF I. TAYLOR, KAITLYN FLETCHER	2323 BRYAN STREET	SUITE 2200	DALLAS	TX	75201		214-969-4900	214-969-4999	DAPICE@SBEP-LAW.COM TAYLOR@SBEP-LAW.COM FLETCHER@SBEP-LAW.COM

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DESCRIPTION	NAME	NOTICE NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	POSTAL CODE	COUNTRY	PHONE	FAX	EMAIL
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In re: Retail Group, Inc., *et al.*
Core/2002 Service List
Case No. 20-33113 (KRH)

DESCRIPTION	NAME	NOTICE NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	POSTAL CODE	COUNTRY	PHONE	FAX	EMAIL
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